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November 22, 2017

MEMORANDUM

TO: The Chair and Members of the Commission
FROM: Robert J. Howatt, Executive Director
SUBJECT: PROPOSED 2018 LEGISLATIVE ISSUES

Background

At the beginning of each legislative session, the PSC Staff has attempted to secure sponsorship for legislative issues that would help clarify the Commission's statutory authority, enhance its regulatory processes, and comport with changes in the federal arena. This opportunity will present itself when the Legislature reconvenes in January 2018. Toward that end, it would be helpful to know the Commission's position with respect to several pieces of draft legislation that Staff is considering for this upcoming session.

Attached is a summary exhibit listing twelve (12) proposed examples of legislation and two (2) existing drafts of legislation on which Staff is requesting the Commission's opinion. Behind that summary exhibit are draft copies of the proposed legislative changes with strike through for deletions and underline for insertions. Staff would welcome the Commission's opinion and guidance on each of the proposed legislative items.

PSC Staff Legislation Proposals

HB 127 & HA 1, Electric Transmission CPCN Requirement – This legislation recognizes the independent and competitive nature of electric transmission as authorized by the Federal Energy Regulatory Commission and requires that any new electric transmission company

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seeking to build transmission in Delaware must apply for a Certificate of Public Convenience and Necessity and meet certain criteria before receiving authorization to construct its transmission. It also applies to electric transmission that may be constructed offshore when such construction ties into Delaware's existing land based transmission system.

House Bill 127 & House Amendment 1 was introduced in the House during the 2017 legislative session. It was approved by the House Energy Committee and the full House of Representatives. In late session, it was approved by the Senate's Environmental, Natural Resources and Energy Committee and added to the Department of State "Must List" for end of year consideration. Unfortunately, the legislation never received a full hearing in the Senate and was not adopted. As this is the follow-on session for the 149th General Assembly, Staff is hopeful that this legislation can be considered and approved by the Senate and receive the Governor's approval.

Without this legislation, and under current statutory authority, an electric transmission company must still apply to the Commission for a CPCN, but the Commission has no criteria under which it may evaluate such application. Without this legislation, the application becomes a mere formality and any offshore transmission may be exempt from the requirement.

Electric Vehicle Supply Equipment – Under current statutory authority, a public utility includes any business (individual, partnership, association, corporation, joint stock company, agency or department of State or any association of individuals, their lessees, trustees or receivers appointed by any court) that provides electric or natural gas equipment or service for public consumption. Staff believes that any electric or gas vehicle charging services available to the public requires the provider to file application with the Commission for a Certificate of Public Convenience and Necessity (CPCN) to provide such service. Staff previously requested the Commission's consideration on this issue, and the Commission directed Staff and DNREC to confer on what might be appropriate legislation for consideration.

While Staff understands that DNREC and others expect a tremendous growth in the electric vehicle market and desire to minimize the barriers to such growth, Staff is also aware of the Commission's responsibility for utilities to maintain safe and reliable service. Fast D.C. electric chargers are known to have the same energy draws as five (5) residential homes. Couple that with multiple charging stations and it can have a significant impact on the distribution system. DNREC has suggested that the Commission refrain from regulation of vehicle charging services. Staff has taken a middle of the road position in recommending no regulation of lower voltage (240 volts and below) and lower gas pressures (300 psi and below) for charging facilities with six (6) or fewer charging stations. Conversely, for facilities exceeding these limits, Staff recommends that the service provider should be required to apply for a CPCN to ensure public notice and Staff's determination that the provider is capable of providing such service, in similar fashion to how the Commission currently regulates Electric Suppliers.

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Staff sees three possible paths forward. Attached is Option One, which provides an exception for all electric and gas vehicle charging services in Delaware and effectively deregulates the services. Option Two deregulates the lower voltage, lower pressure, and smaller charging services, but it requires regulatory approval for higher voltage, higher pressure, and larger charging installations. An Option Three leaves the existing statute and requires all charging services providers to file CPCN applications. Staff recommends Option Two, which also provides the Commission with authority to establish regulations for charging services.

The status in other state jurisdictions varies; however, many have not addressed or do not regulate electric vehicle charging services¹. In D.C., vehicle charging facilities are unregulated unless the company charges on a per kilowatt-hour basis. Maryland definition of electric supplier specifically excludes companies providing charging services. New Jersey statutes are unclear as to required regulation. Pennsylvania does not regulate charging services. Ohio is a “to be determined.”

Integrated Resource Plan (IRP) – In accordance with the Electric Utility Retail Customer Supply Act of 2006, Delmarva must conduct an integrated resource planning process and file its IRP every two years for the Commission to review and confirm it meets the statutory requirements. The IRP, while helpful in exploring possible changes in Delmarva’s long-term approach to electric supply, is an expensive process averaging over \$500,000 for each plan, the cost of which is added to customer utility rates. Several parties to these proceedings look forward to the updated generation cost information and the impacts on the health costs on various alternative supply choices. However, with Delmarva continuing to secure 100% of its energy supply from market based auctions, Staff sees little need to continue burdening ratepayers with the planning costs. Staff recommends that future IRPs be limited to times when Delmarva is directed by the Commission or voluntarily elects to change its supply mix from the 100% market based supply.

Distribution Planning Every Five (5) Years – Delmarva Power’s distribution capital investment plans to spend \$397.4 million between 2012 and 2017 were voluntarily provided in testimony in Docket 13-115. As a result, Staff requested the Commission to review and investigate the need for this level of investment in Docket 13-152. In Order No. 8640, the Commission agreed to hold the docket open pending further discussions on the Exelon-Pepco Holdings, Inc. merger. As part of that merger, Staff and Delmarva agreed to limit the reliability spend, reducing the five-year capital reliability expenditures by approximately \$71.4 million. Without the original voluntary filing, Staff would be very limited in understanding Delmarva’s five-year capital distribution delivery plans.

The proposed legislation requires Delmarva Power to file a five (5) Distribution Plan (DP) starting in 2020 and continuing on every fifth year thereafter. It provides the Commission with

¹ MACRUC Electric Vehicle Infrastructure Regulation, Revised 10/18/2017, Kentucky, Maryland, New York, Virginia, and West Virginia do not regulate charging services

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the authority to draft regulations for the DP and provides for Commission review and approval of the plan.

Rates Under Bond at nine (9) months – Current statutory authority permits a utility to place up to \$2.5 million into rates (subject to a 15% of gross retail revenue cap) 60 days after a filing with the Commission. That same authority permits the utility to place the full rate increase (subject to the same 15% limit) into rates seven (7) months after filing. While it would be ideal to be able to process a case in that same seven (7) months, it is highly impractical given the Administrative Procedures Act requirements and the Commissions' procedures. Staff believes it can process routine rate filings in nine (9) months, and an extension of this time frame to nine (9) months could eliminate the refunds often required under the current process.

Authorization for low income utility rate – Current statutory authority, 26 Del. C. § 303(a), provides that “[n]o public utility shall make, impose or exact any unjust or unreasonable or unduly preferential or unjustly discriminatory individual or joint rate for any product or service supplied or rendered by it within the state ... [.]” This has been interpreted to prohibit any special rates which could be considered unduly preferential or discriminatory. However, this statute does provide for a special economic development rate to encourage economic development, with certain limitations.

Recent public hearings on rate increases have again focused on this issue. Many low-income families are continuing to have difficulty paying for basic utility services. Delaware is one of only eight (8) states that does not provide some form of regulatory rate relief for low-income customers. In Maryland, customers who participate in the Universal Service Protection Program can qualify for monthly bill credits. New Jersey has three (3) programs which can provide up to \$225 credit to low-income customers. Pennsylvania's utilities are all required to have customer assistance programs that provide variable discounts depending on income level. While the low-income fund and LIHEAP does provide some home energy rate relief, the Commission has no ability to consider a reduced rate or discount for low-income customers. While not mandating any actions, this statutory addition provides the Commission with the flexibility to at least consider such a discounted rate.

Elimination of Supplier Fuel Mix Reporting – The current statute requires every electric supplier to provide quarterly fuel mix reports to the Commission. The majority of those filings are merely a copy of the PJM regional fuel mix which is readily available from the PJM Interconnection, LLC website. This routine filing provides little insight into the supply characteristics of electric suppliers. Where it can be helpful is for those suppliers that have separate contracts for supply that may differ from routine purchases through the PJM supply market. This statutory change continues the requirement of quarterly filings for those suppliers with special supply arrangements and eliminates the requirement for the large majority of suppliers using the PJM supply markets.

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Motor Vehicle Assessment Flexibility – Title 6, § 4915 requires the Commission to set an assessment on all motor vehicle dealers on an annual basis. Although the assessment has been \$0, it does require an annual notification to the dealers about the assessment. A minor wording change to indicate the Commission may set an assessment if required eliminates unnecessary notifications until such time as an assessment is required.

Elimination of Basic Cable Rate Regulation – Title 26, § 605 provides the Commission with the authority to regulate “rates charged” for basic cable services. Unfortunately, on September 9, 2016 the Federal Communications Commission (FCC) issued new rules declaring basic cable service to be competitive in all areas because satellite services offer a competitive alternative. To retain a rate regulatory authority, States must petition the FCC showing a lack of competitive alternatives within their boundaries. This change in statute merely reflects the impact of that FCC regulation.

Elimination of Telcom GDPPI Filings – Title 26, § 707(b) requires a Commission decision to change basic telephone rates in Delaware. However, in 2013, House Bill 96 redefined basic service in Delaware to include (1) an individual access line and residential local usage at a location where there is no alternative provider of telephone service and (2) switched access services. This revised definition effectively eliminated any basic telephone service in Delaware as there are no locations in Delaware without mobile wireless service. Also by Delaware statute that basic rate could only be changed in accordance with the filing of the Gross Domestic Product Price Index (GDPPI). With respect to switched access services, carriers such as Verizon DE are prohibited from increasing intrastate switched access rates under federal law. Hence there is no need for filing the calculations for switched access services.

The proposed legislative change eliminates the prior requirements that are no longer regulated by the Commission and conforms to current federal requirements.

Elimination of Telcom Mergers, Acquisitions and Finance Filings – The Federal Communications Commission (FCC) exercises regulatory authority over telecommunication service providers. This service has continued in a competitive manner in Delaware. Under the 2013 legislative changes, Delaware no longer has any regulatory authority over basic telephone service. However, the current Delaware statute does require telecommunication providers to file applications with the Commission for mergers, acquisitions, and financial filings. While Staff continues to review these applications, the Commission typically authorizes an application by the absence of Commission action within the required 30 days. Eliminating these filing requirements from the statute reduces unnecessary regulatory review and oversight of competitive enterprises.

Notification and Enforcement of Ms. Utility Violations – The U.S. Department of Transportation has recently found Delaware to be non-compliant with enforcement actions for excavation and marking violations for underground facilities. This finding provides the State with 5 years to correct any deficiencies in its program. This proposed legislation is a first step

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toward compliance. The legislation requires both the company (operator of the facilities) and the Utility Notification Center to notify both the Attorney General's office and the Public Service Commission of any excavation damage of which they are aware. It also provides for the Attorney General or the Public Service Commission to review the violation and to assess penalties that are consistent with the circumstances and gravity of the violation.

Other Parties Legislative Proposals

SB 135 – Delaware Conservancy Watershed Bill – Staff has reviewed the bill and had discussions with the Delaware Nature Conservancy. Some progress has been made in that the bill indicates the Commission “may” provide for recovery of used and useful watershed improvements. However, the legislation becomes quite specific on how the Commission should provide for such recovery based on projected customers. Additionally, the legislation does not recognize the potential for watershed benefits in other jurisdictions. It would appear that a project in Pennsylvania could be fully charged to Delaware ratepayers without any prorate of the costs and benefits. Staff has indicated its opposition to this bill as currently written.

SB 138 – Diverting RGGI funds to General Fund – Staff has not taken a position with respect to this legislation. Staff is aware that other RGGI states have taken the liberty to redirect RGGI funds to other state needs beyond efficiency, climate change, public information and administrative costs. However, Staff believes this approach is short sighted in attempting to correct a revenue deficiency with program funds designed to help improve Delaware's environment and reduce long-term energy costs for consumers.

PSC LEGISLATIVE ITEMS	YES	NO	MAYBE
Electric Transmission CPCN Requirements HB 127, Approved by House, Awaiting Senate approval			
EVSE Deregulation – Option one (1) Exempts all electric and gas charging services from regulation			
EVSE Limited Regulation – Option two (2) 1) Exempts all 240 volt electric and below, all 300 psi natural gas with 6 or fewer charging positions; 2) Requires CPCN for higher voltages/pressures and permits Commission to write regulations; and 3) Provides for regulation.			
EVSE CPCN Requirement – Option (3)			
Integrated Resource Plan (IRP) 1) As supply resources change, or 2) As directed by the Commission			
Distribution Planning every five (5) years			
Rates Under Bond at nine (9) months			
Authorization for low income utility rate			
Elimination of Supplier Fuel Mix Reporting			
Motor Vehicle Assessment Flexibility			
Elimination of Basic Cable Rate Regulation			
Elimination of Telcom GDPPI Filings			
Elimination of Telcom Mergers, Acquisitions and Finance Filings			
Notification and Enforcement of Ms. Utility Violations			
OTHER LEGISLATIVE ITEMS	YES	NO	MAYBE
SB 135 – Delaware Conservancy Watershed Bill			
SB 138 – Diverting RGGI funds to General Fund			

ELECTRIC TRANSMISSION CPCN

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATING TO PUBLIC UTILITIES

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 1, Subchapter II, Title 26 of the Delaware Code by making deletions as shown
2 by strike through and insertions as shown by underline as follows:

3 § 203E Certificate of public convenience and necessity for new electric transmission utilities.

4 (a) Except as provided in §203A(a)(3) of this title, no person or entity shall begin the business of an electric
5 transmission utility providing transmission facilities, as defined in § 1001(26) of this title, without having first
6 obtained from the Commission a certificate that the present or future public convenience and necessity requires, or
7 will be served by, the operation of such business.

8 (b) A person or entity seeking to begin the business of an electric transmission utility in this State shall
9 first make application to the Commission for a certificate of public convenience and necessity approving the person
10 or entity as an electric transmission utility authorized to provide transmission facilities. The application for a
11 certificate of public convenience and necessity shall be in writing, shall be in such form as determined by the
12 Commission, and shall contain such information as the Commission may prescribe. In determining whether to grant
13 the certificate, the Commission shall consider:

14 (1) Whether PJM Interconnection, L.L.C. (or its successor) ("PJM") has selected the applicant to
15 develop or own transmission facilities included in the regional transmission expansion plan approved through
16 PJM's Federal Energy Regulatory Commission-approved developer qualification and competitive procurement
17 process, or if such PJM approval has not occurred:

18 a. The demonstrated experience, operating expertise, and long-term viability of the applicant or its
19 affiliates, partners, or parent company;

20 b. The need for and impact of any transmission facilities proposed by the applicant on the safe,
21 adequate, and reliable operation or delivery of electric supply services; and

22 c. The engineering and technical design of any transmission facilities proposed by the applicant.

23 (2) The impact of granting the certificate of public convenience and necessity application on the
24 State's economy and the benefits to the State's ratepayers; and

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(3) The impact of granting the certificate of public convenience and necessity application on the health, safety, and welfare of the general public.

(c) The Commission shall act on an application for a certificate of public convenience and necessity within 90 days of the submission of a completed application. For good cause shown, and if it finds that the public interest would be served, the Commission may extend the date of its action on an application for an additional period not to exceed 90 days.

(d) Notwithstanding any other provision of this section, a certificate of public convenience and necessity for an electric transmission utility will not be granted if the Commission finds that the applicant is unwilling or unable to provide safe, adequate and reliable transmission services, or is currently subject to a Commission finding that the applicant is unwilling or unable to provide safe, adequate and reliable transmission services.

(e) The Commission may, for good cause, undertake to suspend or revoke a certificate of public convenience and necessity held by an electric transmission utility. Good cause shall consist of:

(1) A finding by the Commission of material noncompliance by the holder of the certificate with any conditions imposed in the certificate by the Commission, or with any order or rule of the Commission related to the same; or

(2) A finding by the Commission that the holder of the certificate has failed in a material manner to provide safe, adequate, and reliable transmission services.

(f) Any proceedings under this section involving a certificate of public convenience and necessity shall be conducted in accordance with the procedures set forth in subchapter III of Chapter 101 of Title 29.

Section 2. Amend §203A(a)(3), Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(a)(3) This section shall not be construed to require any public utility to secure such a certificate for any construction, modifications, upgrades or extensions within the perimeter of any territory already served by it.

Section 3. Amend §1001(26), Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 1001 Definitions.

As used in this chapter, unless the context otherwise requires:

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(26) "Transmission facilities" means electric facilities located in Delaware, including those in offshore waters and integrated with onshore electric facilities, and owned by a public utility that operate at voltages above 34,500 volts and that are used to transmit and deliver electricity to customers (including any customers taking electric service under interruptible rate schedules as of December 31, 1998) up through and including the point of physical connection with electric facilities owned by the customer.

Section 4. Amend §102(2), Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 102 Definitions.

As used in this title, unless the context otherwise requires:

(2) "Public utility" includes every individual, partnership, association, corporation, joint stock company, agency or department of the State or any association of individuals engaged in the prosecution in common of a productive enterprise (commonly called a "cooperative"), their lessees, trustees or receivers appointed by any court whatsoever, that now operates or hereafter may operate for public use within this state, (however, electric cooperatives shall not be permitted directly or through an affiliate to engage in the production, sale or distribution of propane gas or heating oil), any natural gas, electric (excluding electric suppliers as defined in § 1001 of this title), electric transmission by other than a public utility over which the Commission has no supervisory or regulatory jurisdiction pursuant to Section 202 (a) or (g) of this title, water, wastewater (which shall include sanitary sewer charge), telecommunications (excluding telephone services provided by cellular technology or by domestic public land mobile radio service) service, system, plant or equipment.

SYNOPSIS

This bill updates Title 26 relating to the requirements for obtaining a certificate to operate in Delaware as a new electric transmission utility. This bill uses language similar to certificate requirements for water, wastewater, and other utility services under the jurisdiction of the Public Service Commission ("Commission"). Due to recent changes in federal law, certain projects will now be available to entities both in and out of state. In order to perform this type of work in Delaware, a company will need to obtain a certificate from the Commission. Currently, there are no qualifications defined for the Commission to assess the impact a project of this nature will have on Delaware and its citizens. This bill will provide the Commission with the necessary authority to assess that impact and revoke a certificate in the future for good cause.

EVSE OPTION ONE (1) – DEREGULATION

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE TO CLARIFY THE STATUS OF ELECTRIC AND GAS VEHICLE CHARGING SERVICES

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 26, Chapter 1 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 102 Definitions.

As used in this title, unless the context otherwise requires:

(1) "Commission" means the Public Service Commission.

(2) "Public utility" includes every individual, partnership, association, corporation, joint stock company, agency or department of the State or any association of individuals engaged in the prosecution in common of a productive enterprise (commonly called a "cooperative"), their lessees, trustees or receivers appointed by any court whatsoever, that now operates or hereafter may operate for public use within this state, (however, electric cooperatives shall not be permitted directly or through an affiliate to engage in the production, sale or distribution of propane gas or heating oil), any natural gas, electric (excluding electric or gas vehicle charging service suppliers and electric suppliers as defined in § 1001 of this title), water, wastewater (which shall include sanitary sewer charge), telecommunications (excluding telephone services provided by cellular technology or by domestic public land mobile radio service) service, system, plant or equipment.

Section 2. Amend Title 26, Chapter 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1001 Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Aggregator" means any person or entity who contracts with an electric distribution company, electric supplier or PJM Interconnection (or its successor) to provide energy services, which facilitate battery storage systems for grid-integrated electric vehicles and related technologies.

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(2) "Ancillary services" means services that are necessary for the transmission and distribution of electricity from supply sources to loads and for maintaining reliable operation of the transmission and distribution system.

(3) "Broker" means a person or entity that acts as an agent or intermediary in the sale or purchase of, but that does not take title to, electricity for sale to retail electric customers.

(4) "Commission" means the Delaware Public Service Commission.

(5) "Community-owned energy generating facility" means a renewable energy generating facility that has multiple owners or customers who share the output of the generator, which may be located either as a stand-alone facility or behind the meter of a participating owner or customer. The facility shall be interconnected to the distribution system and operated in parallel with an electric distribution company's transmission and distribution facilities.

(6) "DEC" means the Delaware Electric Cooperative and its successors.

(7) "Demand-side management" means cost effective energy efficiency programs that are designed to reduce customers' electricity consumption, especially during peak periods.

(8) "Direct access" means the right of electric suppliers and their customers to use an electric distribution company's transmission and distribution system on a nondiscriminatory basis at rates, terms and conditions of service comparable to the electric distribution company's own use of the system to transmit or distribute electricity from any electric supplier to any customer.

(9) "Distribution facilities" means electric facilities located in Delaware that are owned by a public utility that operate at voltages of 34,500 volts or below and that are used to deliver electricity to customers, up through and including the point of physical connection with electric facilities owned by the customer.

(10) "Distribution services" means those services, including metering, relating to the delivery of electricity to a customer through distribution facilities.

(11) "DP&L" means Delmarva Power & Light Company and its successors.

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(12) "Electric distribution company" means a public utility owning and/or operating transmission and/or distribution facilities in this State.

(13) "Electricity demand response" has the same definition set forth in § 1501 of this title.

(14) "Electric or gas vehicle charging service supplier" means a person, entity or agency that provides retail electric or gas vehicle charging services for the general public.

~~(14)~~¹⁵ "Electric supplier" means a person or entity certified by the Commission that sells electricity to retail electric customers utilizing the transmission and/or distribution facilities of a nonaffiliated electric utility, including:

a. Municipal corporations which choose to provide electricity outside their municipal limits (except to the extent provided prior to February 1, 1999);

b. Electric cooperatives which, having exempted themselves from the Commission's jurisdiction pursuant to §§ 202(g) and 223 of this title, choose to provide electricity outside their assigned service territories; and

c. Any broker, marketer or other entity (including public utilities and their affiliates).

~~(15)~~¹⁶ "Electric supply service" means the provision of electricity and related services to customers.

~~(16)~~¹⁷ "Fuel cell" means an electric generating facility that:

a. Includes integrated power plant systems containing a stack, tubular array, or other functionally similar configuration used to electrochemically convert fuel to electric energy, and

b. May include an inverter and fuel processing system or other plant equipment to support the plant's operation or its energy conversion, including heat recovery equipment.

~~(17)~~¹⁸ "Grid-integrated electric vehicle" means a battery-run motor vehicle that has the ability for 2-way power flow between the vehicle and the electric grid and the communications hardware and software that allow for the external control of battery charging and discharging by an electric distribution company, electric supplier, PJM Interconnection, or an aggregator.

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71 (~~18~~19) "Integrated resource planning" means the planning process of an electric distribution company that
72 systematically evaluates all available supply options, including but not limited to: generation, transmission
73 and demand-side management programs, during the planning period to ensure that the electric distribution
74 company acquires sufficient and reliable resources over time that meet its customers' needs at a minimal
75 cost.

76 (~~19~~20) "Marketer" means a person or entity that purchases and takes title to electricity for sale to customers
77 in this State.

78 (~~20~~21) "Retail competition" means the right of a customer to purchase electricity from an electric supplier.

79 (~~21~~22) "Retail electric customer" or "customer" means a purchaser of electricity for ultimate consumption
80 and not for resale in this State, including the owner/operator of any building or facility, but not the occupants
81 thereof, that purchases and supplies electricity to the occupants of such building or facility.

82 (~~22~~23) "Returning customer service" means the electric supply service offered to customers with a peak
83 monthly load of 1000 kW or more, which have left standard offer service as of April 30, 2007, and later
84 decide to receive electric supply service from their electric distribution company. For purposes of
85 determining customers eligible for returning customer service, peak monthly load shall be measured by the
86 electric distribution company's separate customer account, not by facility or service location or by customer,
87 in aggregate or otherwise.

88 (~~23~~24) "Standard offer service" means the provision of electric supply service after the transition period by a
89 standard offer service supplier to customers who do not otherwise receive electric supply service from an
90 electric supplier.

91 (~~24~~25) "Standard offer service supplier" means the electric distribution company serving within its
92 certificated service territory.

93 (~~25~~26) "Transition period" means the period of time beginning with the implementation of retail competition
94 and ending on the dates specified in § 1004 of this title.

95 (~~26~~27) "Transmission facilities" means electric facilities located in Delaware and owned by a public utility
96 that operate at voltages above 34,500 volts and that are used to transmit and deliver electricity to customers
97 (including any customers taking electric service under interruptible rate schedules as of December 31, 1998)
98 up through and including the point of physical connection with electric facilities owned by the customer.

99 (~~27~~28) "Transmission services" means the delivery of electricity from supply sources through transmission
100 facilities.

SYNOPSIS

The current definition of public utility would include any business (*individual, partnership, association, corporation, joint stock company, agency or department of the State or any association of individuals, their lessees, trustees or receivers appointed by any court*) that elected to provide electric or natural gas equipment or services for public consumption as an independent business or as part of another retail business. However, many parties believe it is neither desirable nor necessary to regulate such providers in Delaware. This proposed legislation modifies the definition to exempt all electric and gas vehicle charging services from regulation as a public utility

EVSE OPTION TWO (2) – LIMITED REGULATION

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE TO CLARIFY THE STATUS OF ELECTRIC AND GAS RETAIL VEHICLE CHARGING SERVICES

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 26, Chapter 1 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 102 Definitions.

As used in this title, unless the context otherwise requires:

(1) "Commission" means the Public Service Commission.

(2) "Public utility" includes every individual, partnership, association, corporation, joint stock company, agency or department of the State or any association of individuals engaged in the prosecution in common of a productive enterprise (commonly called a "cooperative"), their lessees, trustees or receivers appointed by any court whatsoever, that now operates or hereafter may operate for public use within this state, (however, electric cooperatives shall not be permitted directly or through an affiliate to engage in the production, sale or distribution of propane gas or heating oil), any natural gas, electric (excluding incidental electric or gas vehicle charging service suppliers and electric suppliers as defined in § 1001 of this title), water, wastewater (which shall include sanitary sewer charge), telecommunications (excluding telephone services provided by cellular technology or by domestic public land mobile radio service) service, system, plant or equipment.

Section 2. Amend Title 26, Chapter 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1001 Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Aggregator" means any person or entity who contracts with an electric distribution company, electric supplier or PJM Interconnection (or its successor) to provide energy services, which facilitate battery storage systems for grid-integrated electric vehicles and related technologies.

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(2) "Ancillary services" means services that are necessary for the transmission and distribution of electricity from supply sources to loads and for maintaining reliable operation of the transmission and distribution system.

(3) "Broker" means a person or entity that acts as an agent or intermediary in the sale or purchase of, but that does not take title to, electricity for sale to retail electric customers.

(4) "Commission" means the Delaware Public Service Commission.

(5) "Community-owned energy generating facility" means a renewable energy generating facility that has multiple owners or customers who share the output of the generator, which may be located either as a stand-alone facility or behind the meter of a participating owner or customer. The facility shall be interconnected to the distribution system and operated in parallel with an electric distribution company's transmission and distribution facilities.

(6) "DEC" means the Delaware Electric Cooperative and its successors.

(7) "Demand-side management" means cost effective energy efficiency programs that are designed to reduce customers' electricity consumption, especially during peak periods.

(8) "Direct access" means the right of electric suppliers and their customers to use an electric distribution company's transmission and distribution system on a nondiscriminatory basis at rates, terms and conditions of service comparable to the electric distribution company's own use of the system to transmit or distribute electricity from any electric supplier to any customer.

(9) "Distribution facilities" means electric facilities located in Delaware that are owned by a public utility that operate at voltages of 34,500 volts or below and that are used to deliver electricity to customers, up through and including the point of physical connection with electric facilities owned by the customer.

(10) "Distribution services" means those services, including metering, relating to the delivery of electricity to a customer through distribution facilities.

(11) "DP&L" means Delmarva Power & Light Company and its successors.

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(12) "Electric distribution company" means a public utility owning and/or operating transmission and/or distribution facilities in this State.

(13) "Electricity demand response" has the same definition set forth in § 1501 of this title.

(14) "Electric or gas vehicle charging service supplier" means a person, entity or agency that provides retail electric or natural gas vehicle charging services for the general public with more than six vehicle charging stations per service location or with one or more electric vehicle charging stations operating above 240 volts or one or more natural gas vehicle charging stations operating above 300 psi.

~~(14)~~¹⁵ "Electric supplier" means a person or entity certified by the Commission that sells electricity to retail electric customers utilizing the transmission and/or distribution facilities of a nonaffiliated electric utility, including:

a. Municipal corporations which choose to provide electricity outside their municipal limits (except to the extent provided prior to February 1, 1999);

b. Electric cooperatives which, having exempted themselves from the Commission's jurisdiction pursuant to §§ 202(g) and 223 of this title, choose to provide electricity outside their assigned service territories; and

c. Any broker, marketer or other entity (including public utilities and their affiliates).

~~(15)~~¹⁶ "Electric supply service" means the provision of electricity and related services to customers.

~~(16)~~¹⁷ "Fuel cell" means an electric generating facility that:

a. Includes integrated power plant systems containing a stack, tubular array, or other functionally similar configuration used to electrochemically convert fuel to electric energy; and

b. May include an inverter and fuel processing system or other plant equipment to support the plant's operation or its energy conversion, including heat recovery equipment.

~~(17)~~¹⁸ "Grid-integrated electric vehicle" means a battery-run motor vehicle that has the ability for 2-way power flow between the vehicle and the electric grid and the communications hardware and software that

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allow for the external control of battery charging and discharging by an electric distribution company, electric supplier, PJM Interconnection, or an aggregator.

(19) "Incidental electric or gas vehicle charging service supplier" means a person, entity or agency that provides retail electric or natural gas vehicle charging services for the general public with no more than six vehicle charging stations per service location, with all electric vehicle charging stations operating at or below 240 volts or all natural gas vehicle charging stations operating at or below 300 psi, as an independent electric or gas vehicle charging service supplier or as a minor complement to an unrelated existing retail business.

~~(18)~~ (20) "Integrated resource planning" means the planning process of an electric distribution company that systematically evaluates all available supply options, including but not limited to: generation, transmission and demand-side management programs, during the planning period to ensure that the electric distribution company acquires sufficient and reliable resources over time that meet its customers' needs at a minimal cost.

~~(19)~~ (21) "Marketer" means a person or entity that purchases and takes title to electricity for sale to customers in this State.

~~(20)~~ (22) "Retail competition" means the right of a customer to purchase electricity from an electric supplier.

~~(21)~~ (23) "Retail electric customer" or "customer" means a purchaser of electricity for ultimate consumption and not for resale in this State, including the owner/operator of any building or facility, but not the occupants thereof, that purchases and supplies electricity to the occupants of such building or facility.

~~(22)~~ (24) "Returning customer service" means the electric supply service offered to customers with a peak monthly load of 1000 kW or more, which have left standard offer service as of April 30, 2007, and later decide to receive electric supply service from their electric distribution company. For purposes of determining customers eligible for returning customer service, peak monthly load shall be measured by the electric distribution company's separate customer account, not by facility or service location or by customer, in aggregate or otherwise.

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(~~23~~25) "Standard offer service" means the provision of electric supply service after the transition period by a standard offer service supplier to customers who do not otherwise receive electric supply service from an electric supplier.

(~~24~~26) "Standard offer service supplier" means the electric distribution company serving within its certificated service territory.

(~~25~~27) "Transition period" means the period of time beginning with the implementation of retail competition and ending on the dates specified in § 1004 of this title.

(~~26~~28) "Transmission facilities" means electric facilities located in Delaware and owned by a public utility that operate at voltages above 34,500 volts and that are used to transmit and deliver electricity to customers (including any customers taking electric service under interruptible rate schedules as of December 31, 1998) up through and including the point of physical connection with electric facilities owned by the customer.

(~~27~~29) "Transmission services" means the delivery of electricity from supply sources through transmission facilities.

(30) "Vehicle charging station" means a single vehicle charging location at which one vehicle may be parked and charged by connecting to an electric or gas vehicle charging service supplier's equipment.

Section 3. Amend Title 26, Chapter 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1012 Certification of electric suppliers and electric or gas vehicle charging service suppliers.

(a) Certification requirements. — Prior to doing business in Delaware, every electric supplier seeking to provide electric supply service to customers or every electric or gas vehicle charging service supplier seeking to provide vehicle charging services shall obtain a certificate from the Commission. The Commission shall promulgate rules and regulations governing the information that electric suppliers and electric or gas vehicle charging service suppliers shall be required to provide and requirements to be satisfied in order to obtain such certificate. The failure by any electric supplier or any electric or gas vehicle charging service supplier to comply with any of the requirements promulgated by the Commission shall result in penalties, including monetary assessments, suspension or revocation of the electric supplier's certificate, or other sanctions.

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(b) Rules and regulations.

(1) The Commission may promulgate rules and regulations with respect to electric suppliers and electric supply service to protect customers after the implementation of retail competition, including those related to standardized customer information billing, service terms and conditions, dispute procedures, changing suppliers and standards for suppliers who offer environmentally-advantageous "Green Power" options, such as electricity generated from renewable resources, biomass, hydroelectric and other such generating sources. The Commission shall also require each electric supplier to provide disclosure, on a quarterly basis, of a uniform set of information about the fuel mix of electricity purchased by its customers, such as categories of electricity from renewable resources, coal, natural gas, nuclear, oil and other resources, or disclosure of a regional average. All electric suppliers shall consent to the jurisdiction of the Delaware courts for acts or omissions arising from their activities in the State. Electric suppliers shall not solicit customers by means of telemarketing where such telemarketing is prohibited by applicable laws and regulations.

(2) The Commission may promulgate rules and regulations with respect to electric or gas vehicle charging service suppliers to ensure the continued reliability of electric and gas distribution systems and application of appropriate service terms and conditions to vehicle charging customers. All electric or gas vehicle charging service suppliers shall consent to the jurisdiction of the Delaware courts for acts or omissions arising from their activities in the State.

(c) Fees and assessments. —

(1) Electric suppliers and electric or gas vehicle charging service suppliers required to obtain a certificate to provide retail electric supply service or retail electric or gas vehicle charging service shall pay an application fee of \$750.

(2) For purposes of §§ 114 (Charges and fees; costs and expenses of proceedings), 115 (Public policy; regulatory assessment; definition of revenue; returns; collection of assessment), and 116 (Delaware Public Service Commission Revolving Fund; deposit of moneys collected) of this title, an electric supplier and an electric or gas vehicle charging service supplier shall be deemed to be a "public utility" as defined in § 102(2) of this title.

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SYNOPSIS

The current definition of public utility would include any business (*individual, partnership, association, corporation, joint stock company, agency or department of the State or any association of individuals, their lessees, trustees or receivers appointed by any court*) that elected to provide electric or natural gas charging services for public consumption as an independent business or as part of another retail business. However, it is neither desirable nor necessary to regulate all such providers in Delaware. This proposed legislation modifies the definition to exempt small lower voltage and lower pressure charging facilities (those 240 volts or less and 300 psi or less), providing no more than six charging stations per service location, from regulation as a public utility. For those charging services over 240 volts or 300 psi, or which provide more than six charging stations, which can have a significant impact on the electric or gas distribution system, this legislation requires a Certificate of Public Convenience and Necessity in similar fashion to that required for Electric Suppliers. In similar fashion to Electric Suppliers, the legislation does not regulate the rates that are charged for the service. This legislation gives the Commission the authority to review and approve the operation and service of higher voltage or higher gas pressure charging services that are installed and operating in Delaware.

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INTEGRATED RESOURCE PLANNING

**AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATING TO DELMARVA
POWER'S INTEGRATED RESOURCE PLANNING**

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE

1
2 Section 1. Amend Title 26, Chapter 10 of the Delaware Code by making deletions as shown by strike
3 through and insertions as shown by underline as follows:

4 § 1007 Standard offer service and returning customer service supplier obligation.

5 (a) All electric distribution companies subject to the jurisdiction of the Commission shall be the standard offer
6 service supplier and returning customer service supplier in their distribution service territories. Customers on
7 returning customer service may return to standard offer service after receiving returning customer service for a
8 minimum of 12 consecutive months.

9 (b) Subject to the approval of the Commission, the standard offer service provider to meet its electric supply
10 requirements shall have the ability to:

11 (1) Enter into short- and long-term contracts for the procurement of power necessary to serve its customers;

12 (2) Own and operate facilities for the generation of electric power;

13 (3) Build generation and transmission facilities (subject to any other requirements in any other section of the
14 Delaware Code regarding siting, etc.);

15 (4) Make investments in demand-side resources; and

16 (5) Take any other Commission-approved action to diversify their retail load.

17 In order to take such action, DP&L as a standard offer service supplier must file an application with the
18 Commission or have had such action approved as part of its integrated resource plan pursuant to subsection (c)
19 of this section. If DP&L as a standard offer service supplier files an application under this subsection, then the
20 Commission shall hold an evidentiary hearing on DP&L's request and shall approve the request if the
21 Commission finds that such action is in the public interest. If the Commission approves such a request, the
22 Commission shall review all reasonable incurred costs of the contracts, facilities or programs in accordance with

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subchapter III of Chapter 1 of this title. Costs from these projects which have been approved by the Commission shall be included in standard offer service rates.

(c)(1) DP&L is required to conduct integrated resource planning. On December 1, 2006, and on the anniversary date of the first filing date of every other year thereafter (i.e., 2008, 2010 et seq.), DP&L shall file with the Commission, the Controller General, the Director of the Office of Management and Budget and the Energy Office an integrated resource plan ("IRP"). After the filing of DP&L's December 2016 IRP, an IRP filing shall be made when DP&L elects to change its source of supply pursuant to subsection (b) of this section or as the Commission may otherwise direct. In its IRP, DP&L shall systematically evaluate all available supply options during a 10-year planning period in order to acquire sufficient, efficient and reliable resources over time to meet its customers' needs at a minimal cost. The IRP shall set forth DP&L's supply and demand forecast for the next 10-year period, and shall set forth the resource mix with which DP&L proposes to meet its supply obligations for that 10-year period (i.e., demand-side management programs, long-term purchased power contracts, short-term purchased power contracts, self generation, procurement through wholesale market by RFP, spot market purchases, etc.).

a. As part of its IRP process, DP&L shall not rely exclusively on any particular resource or purchase procurement process. In its IRP, DP&L shall explore in detail all reasonable short- and long-term procurement or demand-side management strategies, even if a particular strategy is ultimately not recommended by the company. At least 30 percent of the resource mix of DP&L shall be purchases made through the regional wholesale market via a bid procurement or auction process held by DP&L. Such process shall be overseen by the Commission subject to the procurement process approved in PSC Docket #04-391 as may be modified by future Commission action.

b. In developing the IRP, DP&L may consider the economic and environmental value of:

1. Resources that utilize new or innovative baseload technologies (such as coal gasification);
2. Resources that provide short- or long-term environmental benefits to the citizens of this State (such as renewable resources like wind and solar power);
3. Facilities that have existing fuel and transmission infrastructure;

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4. Facilities that utilize existing brownfield or industrial sites;

5. Resources that promote fuel diversity;

6. Resources or facilities that support or improve reliability; or

7. Resources that encourage price stability.

The IRP must investigate all potential opportunities for a more diverse supply at the lowest reasonable cost.

SYNOPSIS

The Public Service Commission conducts an annual review of the process by which Delmarva Power obtains electricity to deliver to its customers. With 100% of supply coming from market based auctions, there has been little need to continue the Integrated Resource Plan (IRP) planning process. Under current legislation, Delmarva Power must conduct a complete IRP every two years. The IRP, while helpful in exploring possible changes in long term approaches to electric supply, is an expensive process, the cost of which is added to utility rates. This Bill extends the filing time for future IRP's to those occasions when Delmarva Power is directed or elects to make a significant change in its source of electric supply or as the Commission may otherwise direct. This will reduce the customer costs to complete an IRP every two years, along with Commission time and effort for review.

DISTRIBUTION PLANNING EVERY FIVE (5) YEARS

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATED TO DISTRIBUTION PLANNING OF PUBLIC UTILITIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 26, Chapter 10 of the Delaware Code by making the insertions as shown by underlining and deletions as shown by strikethrough as follows:

§ 1001 Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Aggregator" means any person or entity who contracts with an electric distribution company, electric supplier or PJM Interconnection (or its successor) to provide energy services, which facilitate battery storage systems for grid-integrated electric vehicles and related technologies.

(2) "Ancillary services" means services that are necessary for the transmission and distribution of electricity from supply sources to loads and for maintaining reliable operation of the transmission and distribution system.

(3) "Broker" means a person or entity that acts as an agent or intermediary in the sale or purchase of, but that does not take title to, electricity for sale to retail electric customers.

(4) "Commission" means the Delaware Public Service Commission.

(5) "Community-owned energy generating facility" means a renewable energy generating facility that has multiple owners or customers who share the output of the generator, which may be located either as a stand-alone facility or behind the meter of a participating owner or customer. The facility shall be interconnected to the distribution system and operated in parallel with an electric distribution company's transmission and distribution facilities.

(6) "DEC" means the Delaware Electric Cooperative and its successors.

(7) "Demand-side management" means cost effective energy efficiency programs that are designed to reduce customers' electricity consumption, especially during peak periods.

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(8) "Direct access" means the right of electric suppliers and their customers to use an electric distribution company's transmission and distribution system on a nondiscriminatory basis at rates, terms and conditions of service comparable to the electric distribution company's own use of the system to transmit or distribute electricity from any electric supplier to any customer.

(9) "Distribution facilities" means electric facilities located in Delaware that are owned by a public utility that operate at voltages of 34,500 volts or below and that are used to deliver electricity to customers, up through and including the point of physical connection with electric facilities owned by the customer.

(10) "Distribution planning" means an electric distribution company's planning process that systematically evaluates the need for distribution infrastructure investments during the planning period to ensure that the electric distribution company provides safe, adequate and efficient services that meets its customers' needs at minimal cost.

(11)~~(10)~~ "Distribution services" means those services, including metering, relating to the delivery of electricity to a customer through distribution facilities.

(12)~~(11)~~ "DP&L" means Delmarva Power & Light Company and its successors.

(13)~~(12)~~ "Electric distribution company" means a public utility owning and/or operating transmission and/or distribution facilities in this State.

(14)~~(13)~~ "Electricity demand response" has the same definition set forth in § 1501 of this title.

(15)~~(14)~~ "Electric supplier" means a person or entity certified by the Commission that sells electricity to retail electric customers utilizing the transmission and/or distribution facilities of a nonaffiliated electric utility, including:

a. Municipal corporations which choose to provide electricity outside their municipal limits (except to the extent provided prior to February 1, 1999);

b. Electric cooperatives which, having exempted themselves from the Commission's jurisdiction pursuant to §§ 202(g) and 223 of this title, choose to provide electricity outside their assigned service territories; and

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c. Any broker, marketer or other entity (including public utilities and their affiliates).

~~(16)(15)~~ "Electric supply service" means the provision of electricity and related services to customers.

~~(17)(16)~~ "Fuel cell" means an electric generating facility that:

a. Includes integrated power plant systems containing a stack, tubular array, or other functionally similar configuration used to electrochemically convert fuel to electric energy, and

b. May include an inverter and fuel processing system or other plant equipment to support the plant's operation or its energy conversion, including heat recovery equipment.

~~(18)(17)~~ "Grid-integrated electric vehicle" means a battery-run motor vehicle that has the ability for 2-way power flow between the vehicle and the electric grid and the communications hardware and software that allow for the external control of battery charging and discharging by an electric distribution company, electric supplier, PJM Interconnection, or an aggregator.

~~(19)(18)~~ "Integrated resource planning" means the planning process of an electric distribution company that systematically evaluates all available supply options, including but not limited to: generation, transmission and demand-side management programs, during the planning period to ensure that the electric distribution company acquires sufficient and reliable resources over time that meet its customers' needs at a minimal cost.

~~(20)(19)~~ "Marketer" means a person or entity that purchases and takes title to electricity for sale to customers in this State.

~~(21)(20)~~ "Retail competition" means the right of a customer to purchase electricity from an electric supplier.

~~(22)(21)~~ "Retail electric customer" or "customer" means a purchaser of electricity for ultimate consumption and not for resale in this State, including the owner/operator of any building or facility, but not the occupants thereof, that purchases and supplies electricity to the occupants of such building or facility.

~~(23)(22)~~ "Returning customer service" means the electric supply service offered to customers with a peak monthly load of 1000 kW or more, which have left standard offer service as of April 30, 2007, and later decide to receive electric supply service from their electric distribution company. For purposes of

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determining customers eligible for returning customer service, peak monthly load shall be measured by the electric distribution company's separate customer account, not by facility or service location or by customer, in aggregate or otherwise.

~~(24)(23)~~ "Standard offer service" means the provision of electric supply service after the transition period by a standard offer service supplier to customers who do not otherwise receive electric supply service from an electric supplier.

~~(25)(24)~~ "Standard offer service supplier" means the electric distribution company serving within its certificated service territory.

~~(26)(25)~~ "Transition period" means the period of time beginning with the implementation of retail competition and ending on the dates specified in § 1004 of this title.

~~(27)(26)~~ "Transmission facilities" means electric facilities located in Delaware and owned by a public utility that operate at voltages above 34,500 volts and that are used to transmit and deliver electricity to customers (including any customers taking electric service under interruptible rate schedules as of December 31, 1998) up through and including the point of physical connection with electric facilities owned by the customer.

~~(28)(27)~~ "Transmission services" means the delivery of electricity from supply sources through transmission facilities.

§ 1008 Duties of electric distribution companies.

(a) Each electric distribution company shall maintain its facilities and provide products and services which are safe, efficient, sufficient, adequate, and reliable. Each electric distribution company shall implement procedures to require all electric suppliers to deliver energy to the electric distribution company at locations and in amounts which are adequate to meet each supplier's obligations to its customers.

(b)(1) The Commission is hereby granted the authority to require DP&L subject to its jurisdiction to develop and implement demand-side management programs designed to reduce overall electricity consumption by its customers and/or to reduce usage by customers during peak periods, such as time of use rates, advanced metering infrastructure, central air-conditioning and hot water heating cycling off and on programs, interruptible

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rates, etc. However, in no such instance shall electric distribution companies subject to the Commission's jurisdiction be authorized to implement peak time billing. Upon development of such demand-side management program or programs, DP&L shall file such program or programs with the Commission for the Commission's review and approval.

a. The costs that DP&L incurs in developing and implementing their demand-side management programs, as well as the costs incurred by DP&L in administering all demand-side management programs approved for implementation by the Commission, shall be included and recovered in DP&L's distribution rates.

b. By June 5, 2006, the Commission shall open a docket to evaluate the desirability, feasibility and cost effectiveness of requiring advanced metering technology, including time of use metering to be utilized throughout or selectively in the service territories of DP&L. The Commission may require that such a technology be deployed in a cost effective manner after such evaluation has been made and hearings have been held. As part of the evaluation, the Commission shall review all customer pricing implications of any particular metering technology investigated. The Commission shall not authorize such technology to be deployed in a manner that permits 30-day peak demand billing except as approved by the General Assembly.

c. The Commission shall have the authority to promulgate any rules and regulations it deems necessary to accomplish the development and implementation of demand-side management programs by DP&L.

(2) DEC shall, at a minimum, maintain its current efforts in providing demand-side management programs. DEC shall report on its demand-side management efforts to the Public Service Commission, Controller General and Director of the Office of Management and Budget by January 31, 2007, and January 31 of each subsequent year thereafter.

(c)(1) DP&L is required to conduct distribution planning. Starting on December 1, 2020 and on the anniversary date of the first filing date of every fifth year thereafter (i.e. 2025, 2030 et seq.), DP& L shall file with the Commission and the Energy Office a distribution plan ("DP"). In its DP, DP&L shall systematically evaluate the need for distribution infrastructure investments during a 5-year planning period to

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123 ensure the deliverability of safe, adequate and efficient electric service to meet its customers' needs at a
124 minimal cost. The DP shall identify new customer investment, reliability enhancements, emergency
125 replacements and load growth improvements by year. The DP shall provide peak utilization measures for
126 each substation and distribution circuit infrastructure enhancement, annual anticipated new customers and
127 emergency replacement responses, and new technology investment plans.

128 (2) As part of the DP process, DP&L shall consider the impacts of energy efficiency, renewable energy,
129 demand response, customer sited generation and existing energy policies. DP&L shall explore potential new
130 technologies and cost effective options that may help minimize infrastructure investment and related
131 customer costs.

132 (3) The Commission shall have the authority to promulgate any rules and regulations it deems necessary to
133 accomplish the development of DPs by DP&L. The Commission shall review and approve the DP if it
134 determines the investments are required for safe, adequate and efficient electric service and consistent with
135 the public interest. The costs that DP&L incurs in developing and submitting its DPs may be included and
136 recovered in DP&L's distribution rates.

SYNOPSIS

This bill adds a new Distribution Planning requirement to Title 26 for Delmarva Power. While energy supply rates have continued lower, Distribution system investment has continued to increase, driving significant annual rate increases. Distribution planning provides an opportunity for the Commission and others to gain insight into the infrastructure investment planning process and the needs that drive added infrastructure investment. This change establishes the requirement for a review of distribution investment plans and provides the Commission with approval authority.

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RATES UNDER BOND AT NINE (9) MONTHS

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATING TO PUBLIC UTILITY RATES UNDER BOND

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 26, Chapter 1 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 306 Effective date of rate change; refund bond.

(a) The Commission, upon the filing of a petition for a proposed change to any rate, may within 60 days after said filing:

(1) Suspend the operation of such rate change for a period not to exceed 79 months after said filing; provided, however, that if the Commission has not reached its decision within said 79 months after filing, the public utility may place their rate into effect under bond in accordance with subsection (b) of this section;

(2) Determine that a portion of such change shall become effective not later than 60 days after the filing of the petition on a temporary basis pending the final decision of the Commission.

(b) Upon termination of the 79 months as set forth in paragraph (a)(1) of this section the proposed rate change shall automatically become effective if the public utility files with the Commission a bond in a reasonable amount approved by the Commission with sureties approved by the Commission, conditioned upon the refund, in a manner to be prescribed by order of the Commission, to the persons entitled thereto of the amount of the excess, if the rate so put into effect is finally determined to be excessive; or there may be substituted for such bond other arrangements satisfactory to the Commission for the protection of the parties interested. In no event shall a public utility put a rate into effect under bond as authorized in this subsection that would constitute an increase in excess of 15 percent of the public utility's gross intrastate operating revenues.

(c) Notwithstanding subsections (a) and (b) of this section, 60 days after said filing, a public utility may put a rate into effect under bond as authorized in subsection (b) of this section, provided that the increase does not constitute an increase in excess of 15 percent of the public utility's annual gross intrastate operating revenues or

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- 22 \$2,500,000 annually, whichever is less. This subsection shall not apply to any proposed rate change sought by a
- 23 public utility under regulations adopted pursuant to § 304(b) of this title.

SYNOPSIS

The public process the Commission must use in reviewing utility rate requests by necessity must include public notice, time for public intervention, time to acquire any necessary consulting expertise, information discovery, drafting and filing of testimony and rebuttal testimony, settlement discussions, the conduct of an evidentiary hearing, the drafting of a findings and recommendation report, acceptance of exceptions and review by the Commission. Given the lead times needed for these required steps, a final outcome is almost never known before 9 months. A two-month extension from 7 to 9 months in authorizing a utility's rate will provide opportunity for the Commission to reach a final conclusion and to avoid the typical rate increase followed by refunds or adjustments. The longer period would provide opportunity to complete a rate case and implement a single new rate in a more appropriate period of time.

AUTHORIZATION FOR LOW-INCOME UTILITY RATE

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATING TO PUBLIC UTILITY RATES
UNDER BOND

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Title 26, Chapter 1 of the Delaware Code by making deletions as shown by strike
2 through and insertions as shown by underline as follows:

3 § 303 Unjust or unreasonable rates and preferences; change in fuel adjustment rate; economic development credit
4 for qualifying corporations.

5 (a) No public utility shall make, impose or exact any unjust or unreasonable or unduly preferential or unjustly
6 discriminatory individual or joint rate for any product or service supplied or rendered by it within the State, or
7 adopt, maintain or enforce any regulation, practice or measurement which is unjust, unreasonable, unduly
8 preferential or unjustly discriminatory or otherwise in violation of law, or make, or give, directly or indirectly,
9 any undue or unreasonable preference or advantage to any person or corporation or to any particular description
10 of traffic, in any respect whatsoever.

11 (b) The Commission shall require all utilities operating within its jurisdiction to produce evidence at a public
12 hearing of the need for a change in the fuel adjustment as a part of the rate-making procedure. Notwithstanding
13 any other provisions of this chapter, such fuel adjustment may include a separate component to adjust for or
14 correct for any difference between actual allowable fuel costs incurred by the utility and fuel costs recovered
15 through base rates and the fuel adjustment. Notice of such hearing shall be advertised in at least 1 newspaper in
16 each of the 3 counties. As in other applications before the Commission, the burden of proof that the fuel
17 adjustment change is required shall be upon the utility. No change in the fuel adjustment shall be authorized by
18 the Commission except by affirmative vote of the majority of all members appointed to the Commission. The
19 Commission shall consider the evidence for and against the proposed change as it would all evidence in any
20 other ratemaking procedure. Consistent with the introduction of customer choice in the supply of electricity
21 pursuant to Chapter 10 of this title, and subject to subsection (c) of this section below, this section shall have no
22 application to rates in effect on and after October 1, 1999, for Delmarva Power & Light Company and April 1,
23 2000, for Delaware Electric Cooperative.

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(c) Notwithstanding subsection (b) of this section, the Commission shall determine the actual overrecovered or underrecovered deferred fuel balance for each electric distribution company as of September 30, 1999, for Delmarva Power & Light Company and March 31, 2000, for Delaware Electric Cooperative. Such overrecovery or underrecovery shall be either returned to or collected from that electric distribution company's retail electric customers by a mechanism that is designed to provide a full credit or charge of the actual deferred fuel balance and that the Commission shall adopt and order to be effective no later than 90 days after such dates. The Commission shall adopt either a single bill credit or charge mechanism or an alternative per kilowatt-hour credit or charge mechanism to be in effect for up to a period of 12 months, depending upon the relative size of the actual amount to be credited or charged to retail electric customers. No further adjustments of such amounts shall be required.

(d)(1) The Commission shall authorize a public utility to establish an individual or joint rate for any product supplied or service rendered within the State for the purposes of ensuring the State's current and future economic well-being and growth where prior to authorizing such individual or joint rate the Commission finds:

- a. That such rate is in the public interest;
- b. That such rate prevents the loss of customers, encourages customers to expand present facilities and operations in Delaware and/or attracts new customers where necessary or appropriate to promote economic development in Delaware. This finding shall include, but is not limited to, a determination that the new or existing customer or the growth in an existing customer represents at least 25 jobs and/or at least \$2 million in capital expenditures;
- c. That such rate shall provide recovery of at least the incremental cost (including capital cost) of providing the relevant utility services;
- d. If, how, and to what extent any discount being authorized below a relevant standard tariff rate shall be recovered; and
- e. The period of time during which such rate shall remain in effect, normally up to 5 years.

(2) In addition to the above specific findings, the Commission shall also consider, among other things, the following items:

- a. The utility's load and capacity situation;
- b. The portion that the relevant utility service makes up of the customer's total operating expenses;

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- 52 c. Viable economic alternatives to the utility service available to the customer;
- 53 d. The customer's ability to relocate, if relevant;
- 54 e. Reasonable efforts that the customer has made to secure government grants and/or other concessions;
- 55 and
- 56 f. The effect, if any, on competitors located in Delaware of the customer or customers to which such rate
- 57 may apply.

58 (e) The Commission may authorize a public utility to establish an individual or joint rate for any product

59 supplied or service rendered within the State for the purpose of ensuring basic utility service for the State's

60 qualified low-income residential customers where prior to authorizing such individual or joint rate, the

61 Commission finds:

- 62 a. That such rate is in the public interest;
- 63 b. That such rate shall provide recovery of at least the incremental cost (including capital cost) of
- 64 providing the related utility services; and
- 65 c. That the discount on such rate is recoverable from customers in the same corresponding standard tariff
- 66 and does not exceed 25 percent of the average customer use.

67

68

69 **SYNOPSIS**

70

71 This addition to Section 303 provides the Commission with the flexibility to consider and approve a low income

72 residential utility rate or discount for qualified low income customers, provided that such rate or discount may not

73 exceed 25 percent of the average customer use cost. This permits those customers that have qualified for various

74 rate assistance programs to receive utility services at a lower cost. In the case of Delmarva Power the discount is

75 estimated to be no more than \$10 -15 per month.

76

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REDUCTION OF SUPPLIER FUEL MIX REPORTING

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATING TO ELECTRIC SUPPLIERS
QUARTERLY REPORTING OF SUPPLY FUEL MIX.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Title 26, Chapter 10 of the Delaware Code by making deletions as shown by strike
2 through and insertions as shown by underline as follows:

3 § 1012 Certification of electric suppliers.

4 (a) *Certification requirements.* — Prior to doing business in Delaware, every electric supplier seeking to
5 provide electric supply service to customers shall obtain a certificate from the Commission. The Commission
6 shall promulgate rules and regulations governing the information that electric suppliers shall be required to
7 provide and requirements to be satisfied in order to obtain such certificate. The failure by any electric supplier to
8 comply with any of the requirements promulgated by the Commission shall result in penalties, including
9 monetary assessments, suspension or revocation of the electric supplier's certificate, or other sanctions.

10 (b) *Rules and regulations.* — The Commission may promulgate rules and regulations with respect to electric
11 suppliers and electric supply service to protect customers after the implementation of retail competition,
12 including those related to standardized customer information billing, service terms and conditions, dispute
13 procedures, changing suppliers and standards for suppliers who offer environmentally-advantageous "Green
14 Power" options, such as electricity generated from renewable resources, biomass, hydroelectric and other such
15 generating sources. The Commission shall also require each electric supplier with a fuel mix that is different
16 than the regional average mix, to provide disclosure, on a quarterly basis, of a uniform set of information about
17 the fuel mix of electricity purchased by its customers, such as categories of electricity from renewable resources,
18 coal, natural gas, nuclear, oil and other resources, ~~or disclosure of a regional average.~~ All electric suppliers
19 shall consent to the jurisdiction of the Delaware courts for acts or omissions arising from their activities in the
20 State. Electric suppliers shall not solicit customers by means of telemarketing where such telemarketing is
21 prohibited by applicable laws and regulations.

22 (c) *Fees and assessments.* —

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- 23 (1) Electric suppliers required to obtain a certificate to provide retail electric supply service shall pay an
24 application fee of \$750.
- 25 (2) For purposes of §§ 114 (Charges and fees; costs and expenses of proceedings), 115 (Public policy;
26 regulatory assessment; definition of revenue; returns; collection of assessment), and 116 (Delaware Public
27 Service Commission Revolving Fund; deposit of moneys collected) of this title, an electric supplier shall be
28 deemed to be a "public utility" as defined in § 102(2) of this title.

29 .

SYNOPSIS

Competitive electric suppliers certified by the Commission to provide electric supply services in Delaware are currently required to file quarterly fuel mix statements with the PSC describing the source of energy provided in Delaware such as nuclear, coal, oil, gas, renewable, etc. Every supplier is a member of PJM and while some may have a unique bilateral supply contract, almost all report the standard quarterly/yearly PJM mix of energy supply which is representative for all regional suppliers. PJM's fuel mix is readily available from PJM and offers no insight into a particular supplier's purchases. The elimination of this filing requirement, for those suppliers that rely on the PJM regional fuel mix, can help reduce supplier regulatory costs and potential supply rates without loss of any supply information.

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MOTOR VEHICLE ASSESSMENT FLEXIBILITY

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO THE REGULATION OF MOTOR VEHICLE DEALERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 4. Title 6, Chapter 49 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4915 Limitations on establishing or relocating dealers.

(g) All new motor vehicle dealers in the State shall bear the costs of the administration of this chapter by means of an annual assessment which ~~shall~~ may be established by the Commission as required and shall be no more than what is reasonably needed to defray the annual cost of administering this chapter; provided, in the event the Commission determines that any action or actions by a manufacturer pursuant to this section are frivolous, the Commission may assess the reasonable cost of the hearing against the manufacturer. Such assessment shall be paid by each new motor vehicle dealer on or before March 31 of each year. If a new motor vehicle dealer fails to pay the assessment, it shall pay a penalty of 12 percent of the amount due for each month or fraction thereof that the amount is unpaid. The Commission may enforce the collection of any delinquent assessment, or portion thereof, by legal action or in any other manner by which the collection of debts due the State may be enforced. All assessments under this section shall be deposited in the State Treasury to the credit of a New Motor Vehicle Dealer Fund to be used for the administration of this chapter by the Commission, as authorized by the General Assembly in its annual operating budget. Any amount which remains in the Fund at the end of any fiscal year shall be applied on an equal basis to the assessment charged against each new motor vehicle dealer for the next succeeding fiscal year.

SYNOPSIS

This statute requires the Commission to establish (“shall be established”) an annual assessment, even when, as in most years, it is \$0. Rather than having to notify all motor vehicle dealers of a \$0 assessment every year, it would seem appropriate to change the “shall” to “may” and include the wording “as required.” This eliminates the need for unnecessary annual communications with motor vehicle dealers.

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ELIMINATION OF BASIC CABLE RATE REGULATION

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATING TO RATE REGULATION OF BASIC CABLE PROVIDERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 26, Chapter 1 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 605 Additional powers of the Commission.

In addition to its powers to issue franchises, the Commission shall have the power and jurisdiction to:

(1) Conduct such investigations as may be necessary to determine compliance by a franchisee with this subchapter and the terms of any franchise granted;

(2) Prescribe a nonrefundable application fee in sufficient amount, but no more, to meet the costs necessary for processing the franchise applications;

(3) Examine, upon reasonable written notice and during regular business hours, subscriber lists, repair records, service complaints, ~~rates charged~~, and facilities and interview management personnel of all franchisees or applicants for franchises for the purpose of verifying applications or compliance with the terms of a franchise and of this subchapter;

(4) Intervene as a party in any action, in any court of competent jurisdiction, relating to the grant or performance of any franchise;

(5) Modify the terms of any franchise upon good cause shown by the franchisee;

(6) Adopt such regulations as the Commission may find are necessary or appropriate to implement any federal regulations or legislation governing the provision of cable television service. Regulations adopted pursuant to this authority shall supersede any inconsistent:

a. Franchise provisions, or

b. Sections of this subchapter.

.

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SYNOPSIS

Basic cable rates for Delaware customers have historically been regulated by the FCC with approval by the Delaware Public Service Commission. On September 9, 2016 the FCC issued new rules declaring basic cable service to be competitive in all areas since satellite services offer an effective alternative to existing cable systems. States may petition the FCC to retain rate authority but must show a lack of competitive alternatives in their state. Since satellite service providers exist in Delaware, consumers have competitive alternatives and State regulation is preempted by federal authority. The elimination of this regulatory requirement reduces basic cable filing requirements and the related company costs.

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ELIMINATION OF TELECOMMUNICATIONS GDPPI FILINGS

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATING TO THE RATE REGULATION OF BASIC TELECOMMUNICATION SERVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 26, Chapter 1 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 707 Provision of basic services.

(a) Except for the determination of rate changes for basic services, which determinations shall be made pursuant to the provisions of this section, the offering of basic services in this State shall be subject to the provisions of subchapters I and V of this chapter and §§ 201, 202, 203A(c), 204, 206, 212, 217, 218, 222, and 303(a) of this title and all Commission procedures, rules and regulations shall apply except to the extent inconsistent with this subchapter.

(b) After January 1, 2017 ~~of the year immediately~~ following the ~~initial~~ election or reelection made pursuant to § 704 of this title, rates for basic services shall be established according to prevailing federal jurisdiction, ~~which for any reelecting provider shall be the rates in existence as of July 15, 2013, may be changed by the service provider or upon Commission initiative according to the following formula; provided, however, that a rate for a basic service may not be changed more than once in any calendar year:~~

~~Change in Rate~~ \leq ~~Change in Gross Domestic Product Price~~

~~Inflator since last rate change.~~

~~The Gross Domestic Product Price Inflation Index shall be that published by the United States Department of Commerce with the most recent available data for the relevant period or, in the event that such index is discontinued, the index determined by the Commission to most closely approximate the discontinued index.~~

(c) The following exceptions to the rate changes otherwise determined by federal jurisdiction ~~the foregoing formula~~ shall apply:

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(1) A service provider may not increase switched access rates unless required to maintain parity with its interstate switched access rates.

(2) A service provider may elect not to implement all or a portion of a rate increase otherwise permitted by federal jurisdiction~~required by the formula~~.

(3) A service provider may elect to decrease rates in circumstances where the federal jurisdiction permits~~formula would require otherwise~~.

~~(4) Upon request by a service provider, the Commission may, after notice and hearing, establish a different rate change formula than that set forth in subsection (b) of this section for basic services provided by that service provider in light of the degree of competition, including intermodal competition, the service provider faces, if the Commission determines that the new formula will result in rates that are just and reasonable.~~

~~(5) In circumstances where a rate decrease would result from an application of the formula, the decreased rate shall not be lower than the incremental cost of providing that basic service as determined by the Commission.~~

~~(6) Upon application by a service provider, the rate structure for a basic service may be adjusted by the Commission where such adjustments would neither increase nor decrease the total revenue to the service provider from that particular basic service.~~

~~(7) Upon application by a service provider other than a local exchange carrier, the rates charged for a basic service which is purchased as a necessary component by such other provider of telecommunications services in order to offer its telecommunication services may be adjusted by the Commission upon a showing by such other service provider that the rate is not just and reasonable.~~

~~(8) Upon the application by any ratepayer or the service provider, rates for basic services may be adjusted with approval by the Commission in order to reflect an unforeseen change in the service provider's costs of providing telecommunications services, which change occurs for reasons beyond the control of the applicable service provider. Such change may include, but not be limited to, legal or regulatory changes which affect such costs, the method of accounting for such costs or taxes applicable to the service provider.~~

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~~(9) Notwithstanding any other provision to the contrary, effective January 1, 2014, a service provider may increase rates for basic services, other than switched access services, up to 10% per calendar year for a period of 5 years. Effective January 1, 2019, rates for basic services, other than switched access service, may be increased up to 5% per calendar year. A rate for a basic service may not be changed more than once in any calendar year. The service provider shall provide 30 days advance notice to customers of the first increase in rates.~~

~~(d) Rate adjustments made pursuant to paragraphs (c)(5), (6) and (7) of this section may be made with the Commission's approval at any time and shall not be limited to once in any year.~~

~~(d)(e)~~ Notwithstanding subsection (b) of this section, no service provider may assess switched access rates pursuant to tariff that are higher than the switched access rates set forth in the tariffs of the incumbent local exchange carrier in the same service territory.

~~(f) Notwithstanding any provision to the contrary, the amount of any change in rates resulting from application of the formula in subsection (b) of this section but not implemented by the service provider as of July 1, 2013, shall be deposited into the Delaware Broadband Fund identified in § 709 of this title in lieu of implementing these amounts through changes in rates.~~

SYNOPSIS

The 2013 House Bill 96 redefined basic service in Delaware to include (1) an individual access line and residential local usage at a location where there is no alternative provider of telephone service available and (2) switched access services. This change eliminated any basic service in Delaware and the need for any telecommunication providers to file rates that were previously calculated using the Gross Domestic Product Price Inflation Index. Under federal law, carriers such as Verizon DE are prohibited from increasing intrastate switched access rates, so there is no need for filing any calculation related to switched access services. These changes have eliminated the need for this continued annual filing and these proposed changes can help eliminate and unnecessary regulatory filing burden.

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ELIMINATION OF REGULATORY AUTHORITY OVER TELECOMMUNICATIONS
MERGERS, ACQUISITIONS AND FINANCE

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATING TO TELCOM MERGERS AND TRANSFERS OF CONTROL.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1
2 Section 1. Amend Title 26, Chapter 1 of the Delaware Code by making deletions as shown by strike
3 through and insertions as shown by underline as follows:

4 § 215 Merger, mortgage or transfer of property; issuance of securities; assumption of obligation of another;
5 transfer of control; exceptions.

6 (h) Notwithstanding any other provision of law, no Commission approval shall be required for any ~~internal~~
7 reorganization or merger, mortgage or transfer of property, issuance of securities, assumption of obligation of
8 another or transfer of control of public utility companies providing telecommunications services. ~~that operate~~
9 ~~under common ownership.~~

SYNOPSIS

The telecommunications industry has continued to provide competitive services in Delaware. Mergers, under common ownership, and between rival companies have become typical of the business. The Federal Communications Commission exercises regulatory authority over telecommunication service providers and recent statutory changes eliminated the Delaware Commission's authority to regulate telecommunication customer service in Delaware. While requiring a regulatory filing, applications for merger or transfer of control are almost always permitted by no Commission action within the required 30 day period. Excluding all telecommunication provider merger and transfer of control filings eliminates and unnecessary regulatory requirement and loses little oversight of competitive telecommunication service providers.

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NOTIFICATION AND ENFORCEMENT OF MISS UTILITY VIOLATIONS

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATING TO MISS UTILITY LOCATION REQUIREMENTS

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 26, Chapter 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 803 Duties of operator.

It shall be duty of each operator:

(1) To participate in the approved notification center.

(2) To give written notice to such approved notification center which shall state:

a. The name of the operator;

b. The location of the operator's lines; and

c. The operator's office address (street, number and political subdivision) and the telephone numbers to which inquiries may be directed as to the location of such lines.

(3) To give like written notice within 5 working days after any of the matters stated in the last previous notice shall have changed.

(4) To respond to requests from an excavator or operator who identifies the site of excavation or demolition, or proposed excavation or demolition, for information as to the approximate location and type of the operator's utility lines in the area, not more than 2 working days after receipt of such requests.

(5) To inform excavators or operators who identify the site of excavation or demolition, or proposed excavation or demolition, not more than 2 working days after receipt of a request therefor, of the following:

a. If it is determined by an operator that a proposed excavation or demolition is planned within 5 feet of a utility line as measured in the horizontal plane and that the utility line may be damaged, the operator shall notify the person who proposes to excavate or demolish and shall physically mark the horizontal location of the utility line within 18 inches of the utility line on the ground by means of stakes, paint or other suitable means within 2 working days after the request. The operator shall also notify the person who proposes to excavate or demolish as to the size of the utility line, the type of temporary marking provided and how to identify the markings. In the case of extraordinary circumstances, if the operator

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cannot mark the location within 2 working days, the operator shall, upon making such determination, notify the person who proposes to excavate or demolish and shall, in addition, notify the person of the date and time when the location will be marked;

b. The cooperative steps which the operator may take, either at or off the excavation or demolition site, to assist in avoiding damage to its lines;

c. Suggestions for procedures that might be followed in avoiding such damage;

d. If the operator has no utility line within 5 feet of the proposed excavation or demolition as measured in the horizontal plane and if a proposed excavation or demolition by blasting is not planned in such proximity to the operator's utility lines that the utility lines may be damaged, the operator shall advise the person who proposes to excavate or demolish that marking is unnecessary and that the person may therefore begin the excavation or demolition;

e. In marking the approximate location of utility lines, the operator shall follow the color coding described herein:

Electric power distribution and transmission — Safety red

Municipal electric systems — Safety red

Gas distribution and transmission — High visibility safety yellow

Oil and petroleum products distribution and transmission — High visibility safety yellow

Dangerous materials, product lines, steam lines — High visibility safety yellow

Telephone and telegraph systems — Safety alert orange

Police and fire communications — Safety alert orange

Cable television — Safety alert orange

Water systems — Safety precaution blue

Slurry systems — Safety precaution blue

Sewer systems — Safety green.

(6) To respond to requests from designers who identify the site of excavation or demolition, for information as to the approximate location and type of the operator's utility lines in the area within 15 working days of receipt of a request therefor.

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(7) To inform designers who identify the site of excavation or demolition, or proposed excavation or demolition, not more than 15 working days after receipt of a request therefor of the information set forth at paragraph (5) of this section.

(8) Upon receipt of a request pursuant to paragraphs (4), (5), (6) and/or (7) of this section to assign such request an identifying number (which may be the same as the number assigned by the approved notification center in accordance with § 807(b)(5) of this title), inform the requestor of such number and maintain a record showing the name, address and telephone number of the requestor, the site to which the request pertains and the identifying number assigned to the request.

(9) To provide notification to the Public Service Commission and the Attorney General's office within 15 working days of any facilities damage caused by excavators, regardless of cause.

Section 2. , Amend Title 26, Chapter 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 807 Approved notification center.

(a) The approved notification center shall be Utilities Service Protection of Delmarva, Inc.

(b) The approved notification center shall:

(1) Receive and record information prescribed by § 803 of this title regarding the location of operators' utility lines within the State;

(2) Receive and record information prescribed by §§ 805 and 806 of this title regarding notice by excavators or designers of intended excavation or demolition activity;

(3) Promptly transmit to the operators identified in accordance with § 803 of this title, the information received as prescribed by paragraph (b)(2) of this section;

(4) Maintain records of each notice received in accordance with paragraph (b)(2) of this section for a period of not less than 6 years;

(5) Assign an identifying number to the notice prescribed in paragraph (b)(2) of this section;

(6) Notify those persons giving notice as prescribed by § 806 of this title, of the names of participating operators to whom the notice will be transmitted as prescribed by paragraph (b)(3) of this section and approved notification center's identifying number assigned (pursuant to paragraph (b)(5) of this section) to the notice prescribed in paragraph (b)(2) of this section;

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(7) Provide a toll-free telephone number for use by any person providing notice as prescribed by §§ 803, 805 and 806 of this title;

(8) Identify persons who normally engage in excavation activities in this State;

(9) Notify the persons identified in paragraphs (b)(7) and (8) of this section and the general public as often as necessary to make them aware of:

a. The existence of the approved notification center;

b. The purpose and general requirements of this chapter;

c. How to learn the location of utility lines before excavation or demolition activities are begun; and

d. The toll-free telephone number provided as required by paragraph (b)(7) of this section.

(10) Promptly transmit to the appropriate contact of DNREC the information contained in the notice by excavators or designers of intended excavation or demolition activity as to any DNREC Regulated Site.

(11) Notify the Public Service Commission and the Attorney General's office within 15 days of any facilities damage reported to the notification center, regardless of cause.

Section 3. Amend Title 26, Chapter 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:
§ 810 Penalties.

It is unlawful and a misdemeanor for any person to do any act forbidden, or fail to perform an act required by this chapter.

(1) Except as provided in paragraph (2) of this section, whoever, by action or inaction, violates a provision of this chapter shall, for the first offense, be fined not less than \$100 nor more than \$500. For each subsequent like offense, such person shall be fined not less than \$200 nor more than \$1,000 for each violation.

(2) Operators of underground pipeline facilities, excavators, and the approved notification center shall, upon violation of any applicable requirements of 49 C.F.R. part 198, Subpart C [49 C.F.R. § 198.31 et seq.], be subject to civil penalties not to exceed \$10,000 for each violation for each day that the violation persists, except that the maximum civil penalty shall not exceed \$500,000 for any related series of violations. In determining the amount of the fine, the court shall consider the nature, circumstances and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, any

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108 history of prior violations, the effect on ability to continue to do business, any good faith in attempting to
109 achieve compliance, ability to pay the fine and such other matters as justice may require.
110 (3) The Attorney General and the Public Service Commission shall review each notification of facility
111 damage to determine any violations by operators or excavators. Pursuant to that review, the Attorney
112 General or the Public Service Commission may impose penalties appropriate to the circumstances and
113 gravity of the violation.
114

SYNOPSIS

The U.S. Department of Transportation has recently found Delaware to be non-compliant with enforcement of underground excavation violations. This jeopardizes federal funding for the Commissions pipeline safety program. Two principle reasons for this have been the lack of notification to State agencies and the lack of enforcement when damage is known. This bill updates Title 26, Chapter 8 by ensuring notification of excavation damage to the appropriate State agencies for potential penalties or other enforcement proceedings. It provides that either the Attorney General or the Public Service Commission may enforce penalties appropriate for the circumstances and gravity of the violation.

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SPONSOR:

Sen. Townsend &
Rep. Mulrooney

Reps. Baumbach, Keeley,
Mitchell, Osienski

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY
SENATE BILL NO. 135

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATING TO THE PUBLIC SERVICE COMMISSION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 26, Chapter 13 of the Delaware Code by making deletions as shown by

strikethrough and insertions as shown by underline as follows:

§ 1309. Recovery of costs of source-water projects in rates of public utilities.

In the case of a public utility subject to the jurisdiction of the Public Service Commission, upon the determination by the Commission that a watershed enhancement project confirmed as useful in protecting source water in a report of the Water Infrastructure Advisory Council has been placed into service by the public utility and is used and useful in the provision of public utility services, the Commission may allow the public utility to recover, in its rates, its reasonable and prudently incurred capital and ongoing operating costs for such project. Nothing in this section precludes the Commission from authorizing an allowance for funds used during construction of any such enhancement project.

Section 2. Amend § 302, Title 26 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 302. Determination of rate base.

(a) The Commission may, from time to time, ascertain and determine the rate base of any public utility whenever, in the judgment of the Commission, it is necessary so to do for the purpose of carrying out this chapter, and in making such determination the Commission may have access to and use any books, documents, or records in the possession of any department, board, commission or agency of this State or any political subdivision thereof. In

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ascertaining and determining the rate base, the Commission may determine every fact, matter, or thing which, in its judgment, does or may have any bearing thereon.

(b) If a water utility is not, pursuant to § 122(3)c. of Title 16, under review concerning its water system's ability to provide adequate service to its customers under its present certificates of public convenience and necessity or subject to a review by the Commission of the appropriate rates to be charged by the water utility in light of the quality of service being provided to its customers, the Commission will include in the utility's rate base, treat as used and useful utility plant, and, accordingly, allow to be fully recovered in the utility's rates without imputation of revenues, all costs which are incurred by the water utility, in the exercise of its good faith business judgment, in constructing facilities (including without limitation supply, treatment and transmission facilities) to serve the needs of existing customers or of persons who are reasonably anticipated by the water utility to be its customers within 3 years from the date used by the Commission to recognize rate base in the rate proceeding. The number of customers reasonably anticipated to be added within that 3-year period will consist of customer projections which are relied on by the utility and are generated by professional engineers or planners, governmental or regulatory agencies, officials or authorities, or the water utility itself, and which are not arbitrary and capricious. If the water utility does not, by the end of the 3-year period after the date used by the Commission to recognize rate base in the rate proceeding, reach at least 75% of the total number of customers originally anticipated to be served by the facilities, the Commission may only then require the water utility to impute revenues and then only to the extent of the number of customers it originally anticipated to be served by the facilities but who have not, as of the end of the 3-year period, been added. This section does not apply to watershed enhancement projects as defined under §1309 of this title.

(c) If a water utility is not, pursuant to § 122(3)c. of Title 16, under review concerning its water system's ability to provide adequate service to its customers under its present certificates of public convenience and necessity or subject to a review by the Commission of the appropriate rates to be charged by the water utility in light of the quality of service being provided to its customers, the Commission may include in the utility's rate base, treat as used and useful utility plant, and, accordingly, allow to be fully recovered in the utility's rates without imputation of revenues, all costs which are incurred by the water utility, in the exercise of its good faith business judgment, in investments in watershed enhancement projects under terms specifically articulated under § 1309 of this title to serve the needs of existing customers or of persons who are reasonably anticipated by the water utility to be its customers within 3 years from the date used by the Commission to recognize rate base in the rate proceeding. The

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number of customers reasonably anticipated to be added within that 3-year period will consist of customer projections which are relied on by the utility and are generated by professional engineers or planners, governmental or regulatory agencies, officials or authorities, or the water utility itself, and which are not arbitrary and capricious. If the water utility does not, by the end of the 3-year period after the date used by the Commission to recognize rate base in the rate proceeding, reach at least 75% of the total number of customers originally anticipated to be served by the facilities, the Commission may only then require the water utility to impute revenues and then only to the extent of the number of customers it originally anticipated to be served by the facilities but who have not, as of the end of the 3-year period, been added.

SYNOPSIS

In addition to legislation codifying the recommendations of the Clean Water & Flood Abatement Task Force, other important steps around clean water and clean-water infrastructure should be taken. This bill is intended to promote long-term freshwater security by facilitating private-sector investments in watershed enhancement projects designed to protect high-quality drinking water for Delaware. The bill provides that the Public Service Commission may allow a public utility to recover, in its rates, its reasonable and prudently incurred capital and ongoing operating costs for watershed enhancement projects that are: 1) confirmed as useful in protecting source water by Delaware's Water Infrastructure Advisory Council; 2) placed into service; and 3) used and useful in the provision of public utility service. The bill also provides that the Commission may authorize an allowance of funds used during the construction of such project. This bill is timely in that private-sector entities actively are considering such investments in areas that will improve Delaware's water supply and freshwater resources, and in that Delaware advocates are receiving national recognition and funding for the development of these models.

Author: Senator Townsend

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SPONSOR: Sen. Simpson & Sen. Lavelle

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY
SENATE BILL NO. 138

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO FUNDS OF THE REGIONAL GREENHOUSE GAS INITIATIVE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 6046, Title 7 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 6046. Auction revenue.

(d) The Secretary of DNREC shall use annual auction proceeds to implement the cap-and-trade program, monitor emissions, allowances and offsets, and pay any expenses associated with the program including, but not limited to, expenses related to auctioning and tracking of allowances. This may include contracting with RGGI Inc., paying of dues to RGGI Inc., or transferring funds to RGGI Inc. should DNREC determine it appropriate for RGGI Inc. to undertake any action related to implementation of the program. Any auction proceeds directed to the Secretary of DNREC may also be used to fund climate change activities designed to reduce greenhouse gas emissions from all sectors of Delaware's economy and to maintain a public information program to educate Delawareans about the impacts of climate change on Delaware, and for any administrative costs associated with support of the SEU not otherwise provided for under § 8059 of Title 29.

(e) Notwithstanding any provision of this section to the contrary, the first \$8 million in auction proceeds shall be directed to the General Fund.

Section 2. This Act expires on June 30, 2018 unless otherwise provided by a subsequent by a subsequent act of the General Assembly.

SYNOPSIS

This Act will direct the first \$8 million in auction proceeds received from the sale of emission allowances through the regional Greenhouse Gas Initiative and CO2 Emission Trading Program to be directed to the General Fund for the fiscal year 2018. The balance of the funds will be directed to the Secretary of the Department of Natural Resources and Environmental Control to be directed for the public benefit in accordance with the goals and purposes of this initiative.

Author: Senator Simpson